IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CRIMINAL DIVISION

CRIMINAL APPEAL CASE NO. 24 OF 2022

(Being Criminal Case No. 158 of 2022 before the Senior Resident Magistrate Court sitting at Mwanza)

GIFT LAPOZO

V

THE REPUBLIC

Coram: Justice Vikochi Chima

Counsel Fostino Maele, for the Appellant

Counsel Laureen Mputeni, Senior State Advocate

Mrs Moyo, Court Clerk

ORDER ON APPEAL

Chima J

1. Gift Lapozo was, after a full trial, convicted on two counts concerning Indian hemp and was sentenced to eleven years imprisonment with hard labour on each count and the sentences were to run concurrently. The first one was being found in possession of Indian hemp contrary to regulation 4 (a) of the Dangerous Drugs Regulations as read with section 19 of the Dangerous Drugs Act. The second one was attempting to export cannabis sativa contary to the same provisions. He had been jointly charged with Kings Nyirenda who appeared as the first accused and both were accused of the same offences. Kings Nyirenda pleaded guilty and was convicted on his own plea of guilt.
2. Gift Lapozo now appeals against both the conviction and the sentence.
3. The grounds of appeal are that:
    a. The lower court erred in law in admitting the evidence of Kings Nyirenda who was a co-accused in the same case before the said Kings Nyirenda had been sentenced.

b. The lower court erred in law in admitting the statement of Kings Nyirenda in evidence when the statement was a caution statement and did not comply with the provisions of section 175 of the Criminal Procedure and Evidence Code.
c. The lower court erred in law in convicting the appellant of the offence of possession of Indian hemp without a licence contrary to Regulation 4 (a) as read with section 19 of the Dangerous Drugs Act and the offence of attempting to export Indian hemp without a licence contrary to Regulation 4 (a) as read with section 19 of the Dangerous Drugs Act when there was no evidence at the close of the prosecution's case that the appellant was in possession of the alleged Indian hemp or attempted to export the same.
d. The lower court erred in law in using the call logs as part of the evidence.
e. The learned magistrate erred in law in holding that there was circumstancial evidence proving that the appellant was in possession of the Indian hemp and that he attempted to export the same.
f. The sentence of eleven years with hard labour is manifestly excessive in light of the specific facts of this case.

4. The appellant prays that the conviction be quashed and that in the event that it is upheld, that the sentence be reduced to reflect the mitigating factors.

I. THE EVIDENCE

5. PW1 was Detective Andrew Namboya who testified that on 8 July 2022 the police received information that a truck registration number RU7012 was carrying many bags of Indian hemp. The police waited for the driver, who happened to be the first accused (Kings Nyirenda), while he was at the border doing the border formalities with the immigration officers. The police then approached him and interrogated him on the goods he was carrying in the truck. The first accused admitted to be carrying Indian hemp. They told him to reverse the vehicle and it was parked at the police station; and the first accused was arrested.
6. The first accused told the police that the owner of the Indian hemp was trailing behind him. He asked the police to make a call to him. When he finished the call, the first accused told the police that the owner of the hemp was coming and that he was offering money to the police "for the job to be defeated".
7. The police agreed to meet the one who was said to be the owner of the hemp, who happened to be the appellant, at Las Vegas. At that time, the truck containing the hemp was at the police station. When the police met the appellant, he offered them one million kwacha and he pleaded with them to receive it. PW1 states that knowing the police's role in the society, they declined bribe.
8. The bags were offloaded and counted; there were 229 bags of Indian hemp. The substance was tested by an expert from Bvumbwe Research Station and it was confirmed to be Indian hemp. The weight was found to be 6923.9 kilograms inclusive of wrappings.

9. The second witness, PW2, was Daniel Kausiwa, a technical assistant at Bvumbwe Research Station. He testified that he tested the substance that was suspected to be Indian hemp on 11 July 2022 at Mwanza and confirmed that it was indeed Indian hemp and that he also weighed the Indian hemp. The weight of the 229 bags was 6923.9 kilograms.
10. The third witness, PW3, was Detective Andrew Fatch of National Intelligence and based at National Police Headquarters. He stated that he works as an analyst and thus analyses data brought to him. He stated that after the police obtained a search warrant, they obtained a telephone analysis report of the telephone numbers of the first accused, Kings Nyirenda, and the appellant. The two appeared to have spoken on 7th, 8th and 9th July 2022. On 7th July, they spoke at 20:46 for 60 seconds. On 8th July, they spoke from 06:44 for 55:38 minutes; and that on 9th July, the two spoke for eight times, with the first accused calling the appellant while moving from Machinjiri to Mwanza.
11. PW4 was the first accused, Kings Nyirenda. He adopted his caution statement as part of his evidence-in-chief. His caution statement states that he is a driver by occupation and that he works in that capacity for Lunyina Haulage Co. The first accused continued to state that on 8 July 2022, he called the appellant and asked to meet him in Lunzu so that they could discuss concerning the Indian hemp which the appellant had asked him to transport in the truck tanker that the first accused drives. When the two met in Lunzu, the appellant promised to give the first accused the sum of U$2, 500 after delivering the Indian hemp to Mozambique (the specific delivery place was said to have been known only to the appellant). At their meeting place in Lunzu, the appellant gave him K250, 000 as part payment so that the first accused could spend on the way. The two started off for Golomoti Trading Centre. The appellant was driving his vehicle in front of the first accused who was also driving his vehicle. When they came to Golomoti, the appellant called the one who had ferried the Indian hemp and there came a ten tonne truck at around 10 p.m. In the truck that came, there were the bags of Indian hemp. There also came some young men who offloaded the bags and loaded them into the first accused's tanker. After the loading was done, the first accused started off for Mozambique. When he came to Mwanza Border, he had his passport stamped. After going through the last gate, there came a Probox car in which were police officers. The police arrested him and took him to Mwanza Police Station. The first accused states that he revealed to the police that the Indian hemp belonged to the appellant.
12. PW5 was Detective Sub Inspector Munguluma of Mwanza Border. He and his colleagues intercepted a tanker which was driven by the first accused and had carried Indian hemp. The first accused explained that the Indian hemp belonged to the appellant. The first accused called the appellant and put the phone on loud speaker. The appellant arrived in Mwanza around 9 p.m. and was arrested at Las Vegas. When the police asked the appellant about the Indian hemp, he denied any knowledge of it.
13. The court below found the appellant with a case to answer and the appellant elected to testify but to call noone else as a witness. He denied any connection with the Indian hemp.

He denied having been in Golomoti on any of the mentioned dates of 6th, 7th and 8th July. He testified that on 8 July 2022, he was with a business friend called Richard and that the two were in Blantyre. He confirmed that the cellphone numbers 0888101694 and 0995754769 belong to him. He testified that the first accused works for Lunyina Haulage Co. which has offices in Lilongwe as well as Blantyre. He stated that he had known the first accused for a long time and that the two were friends such that when the first accused would come to Blantyre, the two would meet up and talk. He said it was not strange for the first accused to call him since the first accused was working in Blantyre then. He stated that he had on 9 July gone to Mwanza because the first accused had asked him to go there to help him. The first accused had told him that he had been arrested for carrying some passengers and that therefore he needed money amounting to five million kwacha. When the appellant had asked him the type of passengers he had carried, the first accused had replied that: "Brazi izi ndi za ana amuna", literally, "Brother, this is for boys or male children", meaning that the first accused had entangled himself in mischief which males would normally find themselves caught up in. The first accused asked him to go to Mwanza if he was able to. The appellant thus left Blantyre around 7 pm and arrived in Mwanza around past 8 or to 9 pm.

II. THE RECEPTION OF A CAUTION STATEMENT AS A WITNESS STATEMENT AND SECTION 175 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE

14. When the first accused was called as a witness for the prosecution, he tendered his caution statement (which was a confession of wrongdoing on his part but whose contents also implicated the appellant) as his evidence-in-chief. In analysing the caution statement as part of the prosecution case against the appellant, the magistrate applied the rules regarding confession caution statements as contained in the case of *Chiphaka v Rep.*[1] The principles set out in that case as regards confessions relate to situations where the contents of the confession are to be used as evidence against the accused person who is said to have made the statement but who has retracted the confession at trial. The court in that case was applying the statutory law on the point which is section 176 (1) of the Criminal Procedure and Evidence Code. The rules for use of a confession of one accused against another accused are different and are contained in subsection 2 of the same provision which states that:

> 'No confession made by any person shall be admissible as evidence against any other person except to such extent as that other person may adopt it as his own.'

15. It is obvious from the above quoted provision that the caution statement of the first accused could not be admitted in evidence against the appellant (that is, if the caution statement is put in evidence as part of the investigator's evidence) since the appellant had not adopted it as his own confession.

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[1] [1971-72] 6 ALR Mal 214

16. However, in this particular case, what I see is that the prosecution sought to use the confession caution statement as a witness statement. In that case then, the caution statement could only be used as a witness statement if it complied with Section 175 of the Criminal Procedure and Evidence Code which states that:

> '(1) In any criminal proceeding, a written statement by any person shall, if such of the conditions mentioned in subsection (2) as are applicable are satisfied, be admissible as evidence to the like extent as oral evidence to the like effect by that person.
>
> (2) The said conditions are—
>
> (a) the statement purports to be signed by the person who made it;
>
> (b) the statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he willfully stated in it anything which he knew to be false or did not believe to be true;
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> (c) before the hearing at which the statement is tendered in evidence, a copy of the statement is served, by or on behalf of the party proposing to tender it, on each of the other parties to the proceedings; and
>
> (d) none of the other parties, within seven days from the service of the copy of the statement, serves a notice on the party so proposing objecting to the statement being tendered in evidence under this section:
>
> Provided that the conditions mentioned in paragraphs (c) and (d) shall not apply if the parties agree before or during the hearing that the statement shall be so tendered.
>
> (3) Notwithstanding that a written statement made by any person may be admissible as evidence by virtue of this section—
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> (a) the party by whom or on whose behalf a copy of the statement was served may call that person to give evidence; and
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> (b) the court may, of its own motion or on the application, made before or at the hearing, of any party to the proceedings require that person to attend before the court to give evidence.
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> (4) So much of any statement as is admitted in evidence by virtue of this section shall, unless the court otherwise directs, be read aloud at the hearing...
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> (6) Section 101 of the Penal Code (false statements by any person lawfully sworn as a witness or as an interpreter in any judicial proceedings) shall apply in relation to the making by any person of a written statement tendered in evidence by virtue of this section as it applies in relation to the making of an oral statement by a person lawfully sworn as a witness.'

17. My reading of the above provision is that it deals with two kinds of situations in which a witness statement can be used in court. The first is where the witness statement is tendered in evidence without the need for the witness being called to the stand. The second is where a party to the case or the court decides to have the witness come to testify despite the witness having made a witness statement. I believe the second scenario is what obtained in this particular case. The first accused put in his caution statement as his witness statement after he took oath on the witness stand. In that case, despite there being no declaration contained in the witness statement itself to the effect that he was saying the truth and would be liable to prosecution for perjury if he willfully lied, the oath he took in court validated and sanctioned his caution statement as a witness statement and also the evidence in cross-examination as well as in re-examination that he gave.

III. WHICH WITNESS IS COMPETENT TO TESTIFY AS TO CALL LOGS?

18. A police officer tendered call logs from Airtel and TnM. Our Criminal procedure and Evidence Code has not moved with the times in that it does not speak to issues of evidence

of modern technology of computer-generated evidence. Even the Electronic Transactions and Cyber Security Act is not of much help on the facts at hand. Call logs are machine generated in that the data of call logs is not fed in a computer by a person manually but the machine itself produces it. Thus we cannot speak of anyone having produced the data in a call log report. Now when it comes to testifying on the call log report in court, is the one who printed out the report the one competent to testify on it? Or is the IT engineer who programs and monitors the equipment the one to speak of its accuracy? Those are some of the questions that need proper answers. All I can say is that our evidence rules as they currently are would not allow to be stretched to have PW3 as the one to tender the call logs—the closest person to tender them would have to be someone from the service providers. So I would state that the call logs were tendered by someone not competent to testify on their authenticity.

19. I have looked to other jurisdiction in the commonwealth on the point. In the United Kingdom, prior to the repeal of section 69 of the Police and Criminal Evidence Act 1984 by section 60 of the Youth Justice and Criminal Evidence Act 1999, it was necessary to prove the reliability of the computer before any statement in a document produced by a computer could be admitted in evidence, that is to say, that there was no improper use of the computer and that the computer was working properly at all material times. The one who could testify to this needed not to be a computer expert as Lord Griffiths stated in *R v Shepherd*,[2] that:

> "Computers vary immensely in their complexity and in the operations they perform. The nature of the evidence to discharge the burden of showing that there has been no improper use of the computer and that it was operating properly will inevitably vary from case to case. I suspect that **it will very rarely be necessary to call an expert and that in the vast majority of cases it will be possible to discharge the burden by calling a witness who is familiar with the operation of the computer in the sense of knowing what the computer is required to do and who can say that it is doing it properly**".

20. In that case, the appellant was arrested at her home on 17 March 1989 after a search of her car revealed goods from Marks & Spencer which were various foods, including a joint of beef costing £12.57, and five items of clothing. She possessed no receipt. In an initial interview on the day of her arrest, she declined to answer questions. When she was interviewed again a few days later, she said she had bought the goods at Marks & Spencer at St. Albans and that when she returned to her car, the bags had split and so she transferred the shopping to a bag of her own. She said she never kept receipts and denied stealing the goods.
21. The store detective employed by Marks &Spencer at their St Albans branch testified that she had on the morning of 18 March 1989 removed all the till rolls from the tills and recovered a further two till rolls from a cupboard which bore the date 17 March. She explained that the tills were connected to a central computer which fed in the date, time, customer number and till number on each of the till rolls. She further explained that each item of clothing had upon it a seven figure numbered label known as a unique product code

[2] (1993) A.C. 380; (1993) 1 All E.R. 225

(U.P.C.). The U.P.C. numbers were unique to clothing of a particular type, size and colour. The till operator punched in the U.P.C. number on the till which then registered the appropriate price. In the case of food, each item of food had a price upon it and the operator punched in the price of each item on the till. The store detective testified that they had had no trouble with the operation of the central computer. She also testified that there was no trace on the till rolls in use on 17 March of the U.P.C.s for the clothing found in the appellant's car nor any record of any of the item of food costing £12.57, the price of the beef. Nor was there any group of prices matching the items of food found in her car.

22. It was thoroughly apparent that the store detective was thoroughly familiar with the operation of the tills and of the computer, albeit she did not pretend to have any technical understanding of the operation of the computer.
23. On appeal, it was submitted that the till rolls should not have been admitted in evidence because the store detective did not satisfy the provisions of section 69 of the Police and Criminal Evidence Act 1984.
24. The House of Lords held that all the three categories of information that can be obtained from a computer (whether the computer has simply been used as a calculator; or whether the computer has been programmed to record certain information; or whether the information has been recorded and processed by a computer after it was entered by a person either directly or indirectly), such computer document must comply with section 69 before it can be admitted in evidence. It was further held that the store detective understood the operation of the computer and could speak of its reliability even though she had no responsibility for its operation.
25. In the same case, Lord Griffiths commented on the earlier case of *R. v. Spiby*,[3] in which evidence given by a hotel sub-manager of the reliability of the computer was accepted with regard to call logs. Lord Griffiths observed that the sub-manager was familiar with the operation of the computer and could speak to its reliability. In the *Spiby* case, the accused had been charged with smuggling drugs into England. As part of the proof of his guilt the prosecution wished to show that he was in touch with an accomplice in France. They invited the jury to draw this inference from a computer printout that recorded a number of telephone calls made from a hotel in Cherbourg, at which the accomplice was staying, to the accused's home in England. The computer did not record the contents of the conversations but it did show the date, the time, the number of the hotel room from which the call was made, the number to which the call was made in England, the duration and the cost. Lord Griffiths observed that the important link in the chain of evidence was not what these men had said to each other but the fact that they had been in constant touch with each other and that for this the prosecution were relying solely on the reliability of the computer record.
26. The repeal of section 69 of the Police and Criminal Evidence Act 1984, however, means computer evidence follows the common law rule that a presumption exists that the

[3] 91 Cr. App. R. 186

computer producing the evidential record was working properly at the material time and that the record is therefore admissible as real evidence.[4] That presumption can, however, be rebutted if evidence to the contrary is adduced. In that event, it will be for the party seeking to produce the computer record in evidence to satisfy the court that the computer was working properly at the material time.[5]

27. Other common law countries laws like Sri Lanka[6] and Nigeria[7] still insist on establishing the reliability and accuracy of the computer before a statement from such can be admitted in evidence.

28. Whether it is under the old English regime of adducing evidence of reliability of the computer before an evidential record from a computer can be accepted or under the current dispensation where there is a presumption that a computer was working properly at the material time, I would state that, the bare minimum is that the one to testify on the reliability of a statement from the computer needs to be someone who is familiar with the computer whether he be the computer expert responsible for its operation or not.

IV. IMPROPER ADMISSION OF EVIDENCE

29. The appellant was properly represented at trial before the magistrate court, albeit by different counsel from the present one on appeal, and yet counsel never objected to the admission of the evidence on call logs being given by someone not familiar with the working of the computer that produced them. Section 5 of the Criminal Procedure and Evidence Code states:

> '(1) Subject to section 3 and to the other provisions of this Code, no finding arrived at, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal of complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during the trial or in any inquiry or other proceedings under this Code unless such error, omission or irregularity has in fact occasioned a failure of justice.
> (2) In determining whether any error, omission or irregularity has occasioned a failure of justice the court shall consider the question whether the objection could and should have been raised at an earlier stage in the proceedings.
> (3) The important admission or rejection of evidence shall not, of itself, be a ground for the reversal or alteration of any decision in any case unless, in the opinion of the court before which an objection is raised—
> (a) the accused would not have been convicted if such evidence had not been given or if there was no other sufficient evidence to justify the conviction; or
> (b) it would have varied the decision if the rejected evidence had been received.'

30. Even though the call log evidence was not objected to, it did not occasion any injustice because the magistrate actually found that it did not advance the prosecution's case. Despite the first accused's evidence contained in the witness statement/ caution statement stating that he (the first accused) and the appellant had gone to Golomoti to load the Indian hemp into the first accused's truck and also that the appellant made calls at that place to invite those who had the Indian hemp to bring it, the magistrate found (and rightly so) that

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[4] *Computer Records Evidence*, The Crown Prosecution Service, https://www.cps.gov.uk/legal-guidance/computer-records-evidence accessed on 23 December 2022
[5] Ibid
[6] Section 5 (1) of the Evidence (Special Provisions) Act 1995
[7] Section 84 of the Evidence Act 2011

the call log did not place the appellant in Golomoti on the material dates. So, the call logs, if anything cast doubt on the first accused's testimony.

V. ACCOMPLICES AND PRACTICE AND PROCEDURE IN CALLING ACCOMPLICES

31. Section 242 of the Criminal Procedure and Evidence Code states that:

> 'An accomplice shall be a competent witness against an accused person; and a conviction shall not be set aside merely because it proceeds upon the uncorroborated testimony of an accomplice:
> Provided that the court shall take recognizance of the fact that it is unsafe to convict an accused on the uncorroborated evidence of an accomplice, and shall weigh the evidence, and if it comes to the conclusion that the evidence of the accomplice, although uncorroborated, is true, it may be used as a basis of a conviction.'

32. Counsel for the appellant argues that 'the lower court erred in law in admitting the evidence of Kings Nyirenda who was a co-accused in the same case before the said Kings Nyirenda had been sentenced'. He cites the Supreme Court of Appeal case of *Karima v R*[8] for the proposition that where the prosecution call as a witness an accomplice against whom proceedings have been brought but not concluded, they must let it be known that in no event would the proceedings against this witness be continued. It is evident that the first accused's evidence was taken after he had been convicted of the charges after his own plea of guilty but before he was sentenced. I must say that counsel has not stated the principle from the case correctly and that his application of the principle to the present case is also flawed. In that case, Southworth, C.J. said:

> 'The proposition laid down in the judgment in *Nedi's* case [1966-68] ALR Mal. 439 that the prosecution cannot be permitted to call--"an accomplice against whom proceedings have been brought but not concluded by conviction or acquittal" cannot be supported by reference to [Archbold, *Criminal Pleading, Evidence & Practice*, 36th ed., 2nd Cumulative Supplement, para. 1297 (1966)] or to *Pipe's* case [(1966) 51 Cr. App. R. 17; 110 Sol. Jo. 829]. Indeed, there appears to be no authority for this proposition. As is said in *Archbold* and affirmed in *Pipe's* case, it appears proper to call an accomplice for the prosecution when he has either been omitted from the indictment, **or has been convicted on his own plea**, or has been acquitted, or when a *nolle prosequi* (that is to say, a discontinuance) has been entered." (emphasis supplied)

33. In the *Karima* case, the appellants had been convicted of murder and had appealed the decision. Counsel for the appellants argued that the principal prosecution witness, Kachiwanda, who was an accomplice was not competent to give evidence for the prosecution since he had originally been charged jointly with the appellants. Indeed, Kachiwanda had been jointly charged with the appellants of murder before the case came before the magistrate's court at the preliminary inquiry. No proceedings directed to establishing that charge took place at any stage. Before the commencement of the preliminary inquiry a discontinuance was entered in respect of him and he was thereafter called by the prosecution. Kachiwanda was not committed for trial and at no time was a charge preferred against him that might have formed the subject-matter of a trial. The Supreme Court of Appeal held that in Kachiwanda's situation, under the conditions laid down in *Archbold* and affirmed in *Pipe's* case, he had been properly called as a prosecution witness.

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[8] (1966-68) 4 ALR Mal 601

34. Coming to the present case, it is evident from the passage quoted from the *Karima* case that it talks of "conviction" as one way in which an accomplice's case can come to an end before he can properly be called by the prosecution as a witness. There need not be a sentence yet before the accomplice can testify. Thus, in the present case, the first accused was properly called as a witness.

VI. ACCOMPLICE EVIDENCE AND CORROBORATION

35. Having found that the first accused's caution statement was rightly accepted as evidence, the magistrate should have looked for corroboration of this witness' evidence as a matter of practice since the first accused was an accomplice.[9] If the magistrate were to find none, it was perfectly open for her to convict the appellant on the uncorroborated evidence of the first accused, provided she was convinced of its veracity and she had cautioned herself of the dangers of such a course of action.[10]
36. One piece of evidence that may be said to connect the appellant to the crime is that of PW5, Detective Sub Inspector Munguluma, who arrested the first accused at Mwanza Border and who testified that upon arresting the first accused, he (the first accused) told him that the Indian hemp belonged to the appellant. PW5 also testified that thereupon the first accused called the appellant and that the first accused had put the phone on loud speaker such that PW5 was able to hear what was being said. The problem is that PW5 does not seem to have told the lower court what the conversation was between the first accused and the appellant; at least the lower court's record does not contain the essence of what was said. PW5 did not even indicate that from the conversation itself, he was able to gather that the appellant was indeed the owner of the Indian hemp. The record just jumps to state that around 9pm, the first accused told PW5 that the appellant was in Mwanza at Las Vegas. Since there is no evidence as to what type of exchange there was between the first accused and the appellant, the appellant can say whatever he wants to say and even say that he was called by the first accused to rescue him from the police who had arrested him for carrying passengers in his vehicle and that (he) the appellant simply came to help out a friend who was in that stated predicament.
37. The magistrate states that she found corroboration in the fact that the appellant tried to bribe the police. That the appellant wanted to bribe the police is evident but to what end? That is the question which does not have one answer. There does not seem to have been much conversation when the appellant offered the police the one million kwacha, at least from the record. Was it to rescue his friend the first accused for the alleged "carrying unauthorized passengers" or was it to dissuade the police from arresting him since he was the owner of the Indian hemp?
38. In essence then, there was no corroboration of the first accused's testimony. In the present case, therefore, I do not think it would be safe to convict on the uncorroborated evidence of the first accused for the reason I will now state. While I could throw out the call log

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[9] *Banda v Rep* [1966-68] 4 ALR Mal 336; *Devoy v Rep* [1971-72] 6 ALR Mal 223
[10] Ibid

evidence as not having been properly admitted as evidence, I cannot lose sight of the fact that it was accepted by the lower court and instead of that piece of evidence aligning with the prosecution evidence, it was actually assisting the appellant's case by casting doubt on the first accused's testimony. In these circumstances, it would be dangerous to convict the appellant on the uncorroborated evidence of the accomplice. The convictions cannot be allowed to stand. They are quashed and the sentences are set aside. The appellant should be released from custody unless he is being held for any other lawful reason.

Made in open court this day the 23rd **of December 2022**

V. Chima

Chima J